

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4
5 UNITED STATES OF AMERICA

6 v.

CRIMINAL CASE NO.
AMD-04-029

7 WILLIE MITCHELL,
8 SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

9 Defendants

10 _____/
11 (Excerpt: Defense Opening Statements)
Wednesday, September 17, 2008
Baltimore, Maryland

13 Before: Honorable Andre M. Davis, Judge
And a Jury

14 Appearances:

15 On Behalf of the Government:

Robert Harding, Esquire
Michael Hanlon, Esquire

16 On Behalf of Defendant Mitchell:

Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire

17 On Behalf of Defendant Harris:

Gerard P. Martin, Esquire
Paul Flannery, Esquire

18 On Behalf of Defendant Martin:

Thomas L. Crowe, Esquire
James G. Pyne, Esquire

19 On Behalf of Defendant Gardner:

Adam H. Kurland, Esquire
Barry Coburn, Esquire

20 Reported by:

Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Excerpt: Defense Opening Statements)

2 MS. RHODES: Good morning. My name is Laura Kelsey
3 Rhodes and I represent Willie Mitchell, who is seated next to me,
4 along with Mike Lawlor.

5 A bunch of kids growing up poor in Baltimore and around
6 Baltimore. A bunch of kids that met in junior high and high
7 school and later on and they hang out together and they go in and
8 out of each other's lives over a period of years, just like our
9 friends do in our lives. In and out of each other's lives.

10 Their activities together may include having a beer,
11 they may include smoking pot, hanging out on the street, or going
12 to a movie. But they still were just friends.

13 Eventually, one of them goes off to a juvenile
14 detention facility. That's Willie Mitchell. After getting in
15 trouble in high school, he gets sent there. So his last year of
16 high school he spends at the Hickey School.

17 Fortunately, when he got there, he ran into Coach
18 Lynch, the football coach, who recognized that he had a couple of
19 skills, that he was smart and he was very fast on the football
20 field. So he took him under his wing and at the Hickey School
21 Willie excelled in football.

22 And the coach thought so highly of him he decided to
23 see if he could get him into college, and he did. He sent him to
24 a community college and got the funds together for him to go to a
25 community college in New Jersey. Willie Mitchell went there to

1 play football. He had to work full-time, too, or work almost
2 full-time, too, in addition to his studies. And he did that and
3 he did well, again. He didn't have a strong academic preparation
4 before he went there but he did the best he could.

5 He then went on to another school in Rhode Island,
6 Bryant College, to play there. But when he was there, the
7 academics became tougher and he injured himself. If you don't
8 have the grades, you can't play. So after a couple of semesters
9 there, he couldn't play any more and he had to return to
10 Baltimore. The silver lining there was that he could return to
11 his high school girlfriend and raise their child, which is
12 something he wanted to do.

13 His coach will tell you that it's not easy to prepare
14 kids that come out of Hickey to do well, whether it's on the
15 football field and academics or elsewhere. Willie did the best
16 he could with that.

17 As the years went on, the four men occasionally saw
18 each other. For a while it might be on a daily basis. Another
19 time it might be a couple weeks. Another time it could be months
20 and months before they see each other. And yes, the prosecutor
21 said they were in jail sometimes, that's why they didn't see each
22 other. That's true. Sometimes they just didn't see each other
23 for months because they didn't hang out.

24 But remember, he says that this conspiracy supposedly
25 started in 1994. Well, Willie was away in college and at Hickey

1 for about two and a half or three of those years. Doesn't mean
2 he never spoke to his friends. Well, some of them he didn't even
3 know yet. Doesn't mean he didn't speak to them, but there
4 certainly wasn't, you won't find any conspiracy going on during
5 that time.

6 The testimony you're going to hear is that this group
7 was not organized. It was not coherent. It was not cohesive.
8 It was just their business of being friends.

9 I divided what I'm going to talk to you about into four
10 sections. The first one is called the friend business, because
11 that's really what the government wants to kind of make it into
12 a, some kind of a business or an enterprise, an organization.
13 The fact that some of the things they may have done and you may
14 hear about were illegal doesn't mean it comes under the federal
15 conspiracy law.

16 There were no regular meetings that these four had.
17 There were no dues being paid. There were no officers in this
18 organization. There was no crime family. In fact, the only
19 thing that was organized about what Mr. Mitchell did was the rap
20 business. When he left college and came back to Baltimore he had
21 one dream besides football, and that was the rap business. Not
22 as an artist, not as the rapper, but the business. And that he
23 did work hard at.

24 So the second part I want to talk to you about after
25 the friend business is the rap business. You're going to hear

1 from an expert in that field who's going to tell you how artists
2 get started. It's actually not unlike how other artists get
3 started. You decide, you have a friend who's good at something,
4 you get together with them, you're in somebody's basement, you're
5 in somebody's garage, and you start making music.

6 You're going to hear that, you've heard the term
7 "gangsta rap" already in the voir dire. You're going to hear
8 more about that and you're going to hear the expert talk about
9 when that started to come about. Really in the very late '80s
10 and early '90s it became big.

11 I'm going to play for you one of the songs that started
12 this movement called Straight Outta Compton. It's a song by Ice
13 Cube, is the artist. And when that started, think about the age
14 these men are. As they were coming of age, that's what they were
15 listened to. That's when gangsta rap became big.

16 And in gangsta rap, you're going to hear, you probably
17 heard about it, if you haven't heard a lot of it, you've heard it
18 talked about -- violence sells, sex sells, shootings. And then
19 the bling, cars, clothes, cash. That's what's big. And when you
20 have something like that that's big, that's what your songs have
21 to be about, too.

22 So it is no surprise, and I'm going to play for you the
23 lyrics that Mr. Harding did yesterday, I'm going to play that
24 song for you, a portion of that song, because you need to hear it
25 in the context of these other gangsta rap lyrics and realize that

1 when you want to make it big, that's what you put in your music.
2 You need to have violence. They have violence in them, also.
3 They have threats. They have intimidation. That's what the,
4 that's what the most popular gangsta rap artists have in their
5 songs.

6 The first one I'm going to play for you is the, is the
7 Straight Outta Compton. Compton is a section of L.A., if you
8 don't know where that is. It's the inner city, hard streets of
9 L.A., and that's where Ice Cube is from.

10 What you're going to hear is, not just in this song but
11 throughout this trial, you're going to hear a lot of bad
12 language, a lot of bad words over and over. I'm not going to
13 apologize for it because it's part of this case. And I just want
14 to put it out there so that none of us have to keep apologizing
15 for it when it comes up. All right.

16 (Music played.)

17 MS. RHODES: The government would have you believe that
18 when somebody uses those lyrics, it means they've done that, it
19 means that's what their history is. But I want to show you, I
20 want to show you what Ice Cube is doing now. Ice Cube is in
21 family comedy movies and he's making millions of dollars and he's
22 an actor. That's part of what it's about. It's show biz. It's
23 acting. It's making music. He's made millions of dollars as an
24 entertainer because this is, the rap music is entertainment.
25 It's the entertainment business.

1 The next one we're going to play is Jay-Z, who you'll
2 hear is the, also, you heard about Kevin Lyles yesterday, he's
3 the former president of Def Jam.

4 (Music played.)

5 MS. RHODES: That was done in the 2003 and it sold
6 three million copies in the U.S. alone. Jay-Z sold 50 million
7 copies of songs and albums worldwide, half of them in the U.S.
8 And he's, according to MTV, one of the two best rappers of all
9 time.

10 The lyrics may not be pretty but you can see that's the
11 mainstream. Those are the mainstream lyrics. And what somebody
12 has to do in the rap business is make sure that's part of their,
13 that's part of their song, that's part of them. And you'll even
14 hear that there are rumors that a bunch of people put stuff like
15 that in their lyrics when it's not their experience, and that
16 creates a little controversy. And there are rumors that a couple
17 of rappers have tried to get shot to boost their street cred, to
18 boost their credibility.

19 So you'll see that what sells is what's inflammatory.
20 And to do well, you need to be there.

21 Now, I'm going to play for you the song, a song from
22 Shake Down Records, which is what Mr. Mitchell, Willie Mitchell,
23 and Shelton Harris were working on. And it's a song where Mr.
24 Harris is the artist. The album is called Pure Shit and so is
25 this track.

1 We're going to play about half of this.

2 (Music played.)

3 MS. RHODES: So that is gangsta rap. And the goal that
4 Willie Mitchell and Shelton Harris did have in common was to make
5 it big in that business. And to do that you have to take, you
6 have to go out on a limb. And if there's a rumor of something
7 you hear about, you do a song about it. If there's a rumor about
8 something that's happening in your neighborhood, you do a song
9 about it if it's going to make it big.

10 So stuff that's happening in their neighborhood or in
11 their area that they know about, that's legitimate, that's
12 legitimate for a song. They want to do what's going to sell.

13 As we're going through this trial, you'll want to
14 listen carefully to what the government's putting out there. And
15 you'll remember that Mr. Harding said yesterday that there were a
16 couple of things that the government wasn't really sure about.
17 Doesn't know about how many shooters were there. Maybe one,
18 maybe two. Another situation with Mr. McCaffity, Mr. Harris,
19 maybe somebody else. These were all possibilities. And
20 possibilities aren't going to cut it when the standard of proof
21 is beyond a reasonable doubt. So you'll need to keep that in
22 mind as you listen to the evidence.

23 Is the government proving its case against them,
24 because that's their job? That's what the burden of proof is.
25 It's a job they have to do to prove their case to you.

1 Now, after the friend business and the rap business, I
2 want to talk to you about the blame business. The blame business
3 is what I call what the snitches in this case do. They're going
4 to come in. Now, it's interesting. Mr. Harding said you'll need
5 to decide, do they have an incentive to tell the truth or to tell
6 a lie? Well, he left out a third possibility, which is that they
7 have an incentive to tell you what the government wants them to
8 say.

9 Why would that be? Because you'll hear that it's the
10 government that pulls the strings in terms of their plea deals.
11 You'll see person after person come in here who is getting, like
12 snitches, they're either getting money, they're getting out, or
13 they're getting off. Getting money because sometimes they get
14 actually paid for cooperating. They're getting, they're getting
15 out because they might be doing a ten year sentence or a five
16 year sentence, and when they write a letter saying, I have some
17 information about something, the government can make a deal and
18 get them out of jail then. And they did that over and over in
19 this case with some pretty bad people who went out and did more
20 crimes then.

21 And getting off, sometimes charges just get dropped if
22 you cooperate.

23 So the reason I call that the blame business is because
24 it's what incentive is for some of these snitches to come in and
25 blame somebody else. And it's their own self-interest. It's

1 what's going to get them where they want, where they want to be
2 or away from where they don't want to be.

3 I want to talk in particular about one, one person who
4 is, instead of a snitch may I should call him a cooperator,
5 because he's very cooperative with the government. This is a man
6 named Dwayne Denham. Now, it's interesting because at first when
7 you hear his testimony, you might think, well, this is kind of
8 ordinary testimony. He was with Darryl Wyche the day, earlier in
9 the day when he got killed. And comes in, he'll tell you about,
10 I was with him in DC, we did this and that. Then we left and I
11 went home. And it sounds pretty, sounds kind of boring.

12 But when you listen to it, when you listen to what's
13 behind what he's saying, it gets even more interesting. Because
14 what Dwayne Denham does is he shifts blame.

15 If you think about it, he'll tell you that they went to
16 DC. He and Darryl Wyche went into DC because he's kind of
17 protection for Darryl Wyche. And he'll tell you that means he
18 does drug deals and I protect him. He gets paid a couple hundred
19 bucks, 200 bucks, 300 bucks, for going with him, for things like
20 that.

21 Now, he'll also tell you that he didn't have a gun.
22 He's protection but he doesn't have a gun with him.

23 They go down to DC and he says Darryl's going to do
24 this deal and he's going to sell to somebody down there. He's
25 got some, he's got some coke he's going to sell.

1 They go down to DC and he says that, I don't really
2 know that much about the stuff, I don't want to know too much.
3 He says, I don't want to know too much, it might make me a
4 suspect. And he'll tell you that a couple of times. He'll tell
5 you, I don't want to be a suspect. He's very, very alert to
6 that, very aware of that, that he might look like a suspect.

7 Now, I'll tell you something else. I mean, he's saying
8 that in general. He's also known to have, to rob drug dealers.
9 Okay. So that's his background.

10 So Dwayne Denham. He goes by the nickname Deezo.
11 He'll tell you that he was with him and that he knows that Darryl
12 Wyche got some phone calls that day. Doesn't really know exactly
13 who they were to or from. He'll tell you he knows who Darryl
14 Wyche's supplier was. It was a Dominican guy. He doesn't know
15 his name. But he'll also tell you that he knows that Darryl
16 Wyche owed the Dominican \$50,000. And he'll also tell you that
17 he needed to, Darryl needed to re-up. Re-up, in case you don't
18 watch The Wire, re-up is when somebody has to get more drugs when
19 they're out.

20 So it will be, you'll see it's a kind of interesting
21 combination. Owe your supplier \$50,000 and still need to re-up.
22 And yet Deezo will tell you he had these drugs on him that he
23 took to DC, and he'll also tell you that he had a stash
24 somewhere. You'll find out later where that is. It's in the car
25 they were shot in. But it's a confusing, it's a confusing

1 situation that Deezo tells you about when you start to look at it
2 carefully.

3 For example, he says the deal in DC didn't happen.

4 They went to DC. Now, mind you, they're taking the risk of
5 driving on 95 down to DC. That's why he's got an enforcer with
6 him. And there's a risk of always being stopped by the police.
7 That's a huge risk.

8 So they go down to DC and he's not sure exactly why the
9 deal doesn't go through but he'll tell you he thinks it's because
10 they couldn't agree on a price.

11 So they come back up 95, which is inconvenient, because
12 they've still got the drugs on them, still facing the risk. But
13 they come back up 95. But he'll tell you Darryl was not
14 particularly upset about that. That was okay with him.

15 You'll hear that that's not really how it works in the
16 drug business. It's not okay if you drive down to DC, taking all
17 that risk, and you don't make a deal. But he'll say Darryl was
18 okay with that.

19 Then he'll tell you that they all went to this place in
20 Randallstown. There was a party at somebody named Randy's house.
21 They went there and they're hanging out there for a while. And
22 then he says, and then we left. Darryl, his brother, and Deezo,
23 all left at the same time. And the other witnesses say that,
24 too, which means that Deezo was, in fact, the last person to see
25 them alive.

1 So it's very convenient when Deezo later says, I went,
2 I got in my own car then, I didn't go with them. But the people
3 inside the house don't know that. They'll tell you, we just saw
4 the three of them leave together.

5 And you've heard that the Wyche brothers were killed by
6 somebody sitting in there, in the back of their car. So it had
7 to be somebody they knew and trusted.

8 Deezo will also tell you, I'm not sure of the exact
9 amount that Darryl had that day, that he was taking to DC. And
10 he'll tell you there, I didn't want to make myself a suspect.
11 Okay. Again, nothing, he's doing absolutely nothing wrong.
12 He'll consistently shift the blame off himself to somebody else.

13 He also will tell you he knew that Darryl had gotten,
14 had gotten kidnapped a couple of times. But I don't know the
15 details about that. I don't know if he did anything about that,
16 I just know he had gotten kidnapped a couple of times recently.
17 He also said the reason he doesn't know where Darryl's stash is,
18 is that he'll tell you it's because, if I didn't know where his
19 stash was, then you'd automatically have to eliminate me as a
20 suspect. Well, nobody was initially saying he was a suspect but
21 he keeps talking about how he's not. Anything that's coming
22 toward him, he is pushing off on somebody else.

23 The other things that don't add up about what Deezo
24 says is, there's a rumor that Willie Mitchell was mad at Darryl
25 Wyche. So why would Darryl Wyche meet with him? Is it more

1 likely that Willie Mitchell would be there or that Deezo, his
2 friend, would be there? His friend who's a drug dealer and knows
3 how much money Deezo, Darryl has right then.

4 We also know from Darryl's wife that she had counted
5 out with him about \$23,000 a couple of nights before this. So of
6 the \$50,000 he owed, presumably a chunk of it was available. And
7 again, you have to ask yourselves whether it's more likely that
8 Deezo knew that or that Willie Mitchell knew that.

9 You also saw on this chart that the prosecutor put up
10 that Darryl Wyche was a supplier for Willie Mitchell. So why is
11 he going to mess up his supply? What's the advantage there? And
12 you will also hear that the cocaine was left behind in the Wyche
13 brothers' car. That sound more like somebody that was after the
14 money, who knew the big money was there. And that would be
15 Deezo.

16 You're going to hear a lot of other snitches talk, too,
17 and you'll need to evaluate their motivation, motivation which is
18 usually just, get me out of jail.

19 The prosecutor would have you believe, I think, that
20 the killings, that the McCaffity killing and Wyche brothers, were
21 similar. But even their own version shows you that there are
22 different, completely different motivations if their. If their
23 versions are even correct about what the motivations were,
24 they're not similar. They don't know, they don't know how many
25 shooters were in each one. In McCaffity there's no direct

1 evidence that Willie Mitchell was involved at all in that
2 shooting. None. As far as Shelton Harris goes, there is the
3 print from his palm on that car.

4 The bottom line is that the snitches want to either get
5 off or get out or get money. And those are the three motivators
6 that all of them have. And none of those involve telling the
7 truth.

8 The fourth area I want to talk to you about is what I
9 call the free man business. And it's a little complicated and
10 confusing.

11 You're going to hear from some attorneys who have
12 represented people in federal court in Maryland who have put
13 forth some arguments that the prosecutor talked about in certain
14 types of cases. And the prosecutor has decided that those
15 arguments and those papers they filed with the Court are part of
16 their conspiracy. So we have to address it and tell you what
17 those papers mean and what they're about.

18 One way we're going to do that is to have people, other
19 attorneys come in who have represented people in these situations
20 and discuss what their research has shown about these filings.
21 What they will say is that it's almost like a virus spreading in
22 the federal prisons; that people get word of an argument you can
23 make in a case and they latch on to that and believe that it will
24 get them off, that this defense they're going to use will get
25 them off.

1 And what it is basically is arguing that the federal
2 government has no jurisdiction over them. "Jurisdiction" is a
3 legal term and jurisdiction has to do with what court has
4 authority or power over you. For example, if you get a traffic
5 ticket out here on Pratt Street, Judge Davis can't do anything to
6 you. Okay? This court has no authority over that kind of
7 matter. If you get a traffic ticket on a military base, you have
8 to go to a different court than you would go to if you'd gotten
9 that ticket right outside the military base. So that's just what
10 court is going to have something.

11 The reason that's become an issue here is because these
12 crimes that are charged here, drug offenses, murders, are
13 normally in state court. And when defendants who are normally in
14 state court get put into, get charged with something that is a
15 federal offense, and in this case charged with this RICO statute
16 you've heard about, which is a statute that was designed for
17 organized crime, for the Mafia. And the federal government, when
18 they try to put something like this on these guys, it's bringing
19 about an enormous reaction that's spreading through the detention
20 centers and the prisons.

21 And what their reaction is, is we reject that you have
22 any authority over us. We don't accept that authority. And the
23 form it's taken here is a whole variety of pleadings.

24 They have filed pleadings that ask the Court to
25 discharge the case, a number of things like that. And as I said,

1 they believe that if they come in here and assert this defense
2 and stick to it, come hell or high water, that they will win,
3 they will prevail in their case.

4 So when the, when the feds stepped in and took their
5 cases from state court to federal court, a kind of desperation
6 set in. And that's when these pleading started. To them it was
7 no longer a fair fight.

8 And you'll hear that, yes, they were at times rude in
9 court and that they were at times during hearings, they would
10 interrupt their attorneys or they would interrupt the judge. And
11 that was, that that was annoying and irritating to those
12 participating. But it was not obstruction of justice, which is
13 what the government would have you believe.

14 In fact, it did not stop the prosecution at all. It
15 did not stop the hearings. Generally, if there was disruptions,
16 Judge Davis would ask the marshals to escort them out and they
17 would escort them out calmly and the proceedings would continue.
18 So there was, in fact, no obstruction of justice.

19 In fact, Judge Davis at one point wrote an opinion
20 about their, what they had filed, to rule that there was no issue
21 with jurisdiction. And in that opinion he said --

22 MR. HARDING: Objection, Your Honor.

23 THE COURT: Sustained.

24 MS. RHODES: Judge Davis's ruling was that there, that
25 these behaviors were not going to, that they would not prove

1 effective in this case. The point is, you will hear from our
2 witnesses that this was their way of, the defendants' way of
3 making their voices heard. And that does not mean it's part of a
4 conspiracy.

5 I'm going to read to you part of what my client has
6 asked that I do in this case so that you understand their
7 position.

8 MR. HARDING: Objection, Your Honor.

9 THE COURT: Well --

10 MS. RHODES: These have been filed with the Court, Your
11 Honor.

12 THE COURT: Approach the bench, please. Just Ms.
13 Rhodes and Mr. Harding, please.

14 (Bench conference with Ms. Rhodes and Mr. Harding.)

15 MS. RHODES: It's the same thing. It's the same thing
16 they filed.

17 THE COURT: You going to put this in evidence?

18 MS. RHODES: Well, I assume that, that that language is
19 in evidence.

20 THE COURT: Are you going to put this sheet in?

21 MS. RHODES: I wasn't going to.

22 THE COURT: Do you object to it coming into evidence?

23 MR. HARDING: Judge, I'm going to move a number of
24 these pleadings into evidence. I can't say whether this is one
25 of them.

1 THE COURT: Okay. But generally, it's going to contain
2 the same kind of stuff?

3 MS. RHODES: It's probably verbatim, if not very close.

4 THE COURT: Looks largely the same.

5 MS. RHODES: Yes.

6 MR. HARDING: I'll withdraw my objection.

7 THE COURT: Okay.

8 (End of bench conference.)

9 THE COURT: The objection is withdrawn by the
10 government.

11 MR. HARDING: Thank you, Your Honor.

12 MS. RHODES: My instructions from Mr. Mitchell are:

13 Do not argue the facts, request the Court issue an
14 appearance bond and waive all public costs. Request the Court
15 close the account and release the order of the court to him
16 immediately. Request the Court set off and adjust all public
17 charges by the exemption in accord with Uniform Commercial Code
18 3-419, House Joint Resolution 192, and Public Law 7310. Request
19 an immediate discharge. We do not waive Mr. Mitchell's rights,
20 in fact, and we reserve all of his rights with explicit
21 reservations and without prejudice. Mr. Mitchell accepts for
22 value Case Number AMD-04-0029, which is this case, for value, and
23 returns said case for closure and settlement of the account.

24 And that, we argue, is his right to express to this
25 jury, it's his right to express it in terms of what his defense

1 is. And it is really more akin to an act of civil disobedience
2 than it is to any kind of obstruction of justice.

3 To summarize, we have four things I've talked about
4 here. There's the friend business, which is where we believe
5 that you will find that there is no conspiracy, this is just a
6 very, very loose knit group of friends that sometimes do stuff
7 together. If you think of it as four people, A, B, C and D.
8 Sometimes A and B do stuff. Sometimes A and C. Sometimes A and
9 D. Sometimes B and C. It's random.

10 As I said, there are no meetings. There are no dues.
11 There are no officers. There is no organization. This is
12 disorganized, if anything.

13 The rap business. Two of these defendants tried to
14 make it big in the rap business. In fact, at Hammerjacks that
15 might, meeting Kevin Lyles, that was to be getting their word,
16 getting their music out there. That was to be the night.

17 The blame business. People pointing fingers at people
18 and trying to get something for their testimony that the
19 government needs and wants.

20 The free man business. The only way they think they
21 can get their voices heard.

22 Because a bunch of kids who grew up poor in Baltimore
23 and around Baltimore that are friends that hang out from time to
24 time and later sometimes a couple years go past and later a
25 couple more years go past, that does not equal organized crime.

1 And therefore, it does not mean that there's a federal conspiracy
2 here. Thank you.

3 THE COURT: Thank you, Ms. Rhodes. Mr. Martin, I
4 believe you wish to reserve your opening?

5 MR. MARTIN: Yes, Your Honor. At this time I'll
6 reserve my opening until the beginning of the defense case.

7 THE COURT: Very well. Mr. Crowe.

8 MR. CROWE: Yes, Your Honor.

9 THE COURT: You may proceed whenever you're ready.

10 MR. CROWE: Good morning. We met briefly on Monday
11 morning. My name is Tom Crowe. Jim Pyne and I represent Shelly
12 Martin in this criminal case. Jim is the fellow who's seated
13 kind of at the end of, the corner at the right angle of the two
14 tables. Mr. Martin is the individual immediately in front of
15 him, with the striped shirt.

16 Now, as I'll explain to you in some detail in a few
17 minutes, Mr. Martin is named in fewer counts of this fourth
18 superseding indictment than any of the other defendants. And a
19 count is essentially a criminal charge. And that means that he
20 has fewer criminal charges against him than any of his
21 codefendants.

22 As Judge Davis correctly told you on Monday, all of the
23 charges in this case are serious and that certainly goes for all
24 of the charges that have been filed against Mr. Martin.

25 Now, in a sense, Jim Pyne and I kind of stand between

1 Mr. Martin and the full weight of the federal government, the
2 state government, various law enforcement officers from Baltimore
3 City and Baltimore County. Mr. Harding and Mr. Hanlon are here
4 today from the U.S. Attorney's Office. I think Ms. Kelly was
5 here yesterday. She will probably be here in other instances.
6 Mr. Keith Benson, who's a Baltimore County detective and on a
7 state/federal task force is here. And yesterday there was what
8 they called the case agent, Special Agent Brian Klas from
9 Alcohol, Tobacco and Firearms. These are all people that you're
10 going to be hearing about.

11 You may think that in some ways this is an unfair
12 fight. I got to tell you in a lot of ways that I agree with you.
13 But Mr. Pyne and I have a little bit of company in a sense
14 because in a way each of you and Judge Davis also stand between
15 the government and Mr. Pyne (sic). By that I don't mean to say
16 that you're partisans or, as the expression goes now, that you
17 have a dog in the fight. You're something that, quite the
18 contrary.

19 You will be told before this case is over that jurors
20 are, in fact, judges of the facts. Mr. Harding doesn't decide
21 the facts. God knows I don't decide the facts. Even Judge Davis
22 doesn't decide the facts. It's up to you to listen to the
23 evidence, to decide the facts, and to then use your mature
24 judgment to determine what the verdict should be in this case,
25 and to go down defendant by defendant, count by count, and make

1 the determination whether or not the prosecution has proven its
2 case beyond a reasonable doubt. Judge Davis gives you the law
3 but you decide in the end whether the government has proven any
4 of the charges beyond a reasonable doubt.

5 Now, yesterday Mr. Harding gave a pretty powerful
6 opening statement. I think you realize that this is a matter in
7 which the government has devoted a fair amount of time. But what
8 we need to do is to examine what he has laid out very carefully.

9 Now, stripped to its essentials, the government charges
10 that Mr. Martin was involved in three areas. First, he was
11 involved, and I think that's actually the word that Mr. Harding
12 used, he was involved in the killings of Darryl and Anthony
13 Wyche. He really doesn't tell us how. He just said that he was
14 involved.

15 Secondly, he tells us that my client, Shelly Martin,
16 was a member of a criminal enterprise which went on from 1994
17 until August 18th of 2006.

18 Third, he says that my client was involved in a
19 continuing organization that dealt drugs between 1994 and 2004.
20 These drug, this so-called enterprise or RICO enterprise in this
21 drug thing overlapped to quite a good amount. Those are the
22 essential allegations and they're spread out among seven counts
23 or criminal charges in this case against my client.

24 It's important that you recognize in the beginning that
25 this indictment, actually called the fourth superseding

1 indictment, does not allege that Mr. Martin is involved in some
2 very terrible things about which you're going to be hearing days,
3 if not weeks, of testimony.

4 First is the Hammerjacks brawl in February of 2002
5 where several people were apparently stabbed. Secondly, he
6 wasn't involved in the robbery or death of Oliver McCaffity.
7 Third, he was not involved in the death of Lisa Brown. Fourth,
8 the indictment does not charge that he was involved in any way,
9 even as a conspirator, in the attempted robbery and the
10 conspiracy to rob Darius Spence. That would be in June of 2002.
11 And finally, he was not involved in the robbery and the very
12 tragic death of Tonya Jones-Spence in June of 2002.

13 When the evidence is in, we believe that you will
14 conclude that Mr. Martin was not involved in the killings of
15 Darryl and Anthony Wyche, that he wasn't involved in this grand
16 RICO enterprise which ran continuously for a period of more or
17 less 12 years, and that he was not involved in any drug
18 conspiracy that spanned a period of 11 or 12 years.

19 Let's get to the heart of the matter for Mr. Martin,
20 which is the matter involving the Wyche brothers.

21 Mr. Harding characterized Darryl Wyche and his brother,
22 Anthony Wyche, as big time drug dealers. I think that's probably
23 clearly true of Darryl Wyche. I'm not sure what the evidence is
24 going to be as to Anthony. Whatever these men did in their
25 lives, whatever they were up to on March 24 and March 25 of 2002,

1 they certainly didn't deserve to die. Their deaths are tragic.
2 And not only did they die, but they obviously left a big hole in
3 some of their relatives' lives. Those lives are going to be
4 forever changed.

5 I expect some of those relatives are going to be
6 testifying for the government. And I expect they are still very,
7 very sad, they are very, very stricken by this. I expect a fair
8 amount of that is going to come out.

9 But the issue really with respect to Mr. Martin is what
10 did he have to do with these murders? The road map that Mr.
11 Harding tried to lay out, I will tell you, is not really
12 specific, very specific about this. In transitioning between the
13 murder of Mr. McCaffity and Lisa Brown in this matter, all he
14 said was that Willie Mitchell decided it wasn't sufficient to use
15 just Harris and Shawn Gardner, just Harris for the Wyche
16 brothers, so Shawn Gardner and Shelly Martin became part of the
17 scheme.

18 Now, Mr. Harding also told you at some point that we as
19 defense attorneys had seen all the papers in this case. I'm not
20 sure if we've seen all but we've seen an awful lot.

21 I have to tell you that Mr. Pyne and I are basically
22 clueless about what Mr. Harding meant by that statement. What is
23 the evidence going to be that Mr. Mitchell decided that it wasn't
24 sufficient for just Mr. Harris to be involved and that these
25 other two had to come into it? We don't know. Maybe we will

1 find out as the case goes on.

2 What I will tell you is that there is no evidence that
3 Mr. Martin was present at the killings himself. No one will say
4 he is. There is no forensic evidence to suggest that he was.
5 His fingerprints weren't recovered. His palm print wasn't
6 recovered. They did tests for DNA evidence and they didn't come
7 up with anything.

8 Mr. Harding suggested at different points that there
9 may be three things that tie Mr. Martin into this. The first,
10 kind of surprisingly, is that Mr. Martin was some place else that
11 night. Therefore, he says, what Martin had to be doing was to be
12 setting up an alibi because he knew that something was going to
13 go on.

14 Secondly, he tells you that there was some telephone
15 traffic that night between some telephone that Mr. Mitchell was
16 using and a telephone that Mr. Martin was using.

17 Third, he contends that the word "Wayne" appears in
18 that, remember that voice mail message, where he told you that
19 people pulled out the cell phone and pushed the wrong button, and
20 the message went into the cell phone of Irene Magginson, who was
21 the mother-in-law of Darryl Wyche.

22 Well, let's look at these matters. First, the supposed
23 false alibi. When Mr. Martin was arrested on April 17 of 2002,
24 he told law enforcement, and particularly he told the lead
25 investigator for the Baltimore City Police at that time, a

1 Detective Gary Niedermeyer, where he was that night. He told him
2 what theater he was at, he told him where he was. And eventually
3 Mr. Niedermeyer goes to the theater. He sees Jason Walter, who
4 was the manager of the theater. Mr. Walter pulls out some
5 papers, including a charge slip, which is signed Shelly Martin.
6 Pays 16 dollars for two tickets. Indicates that the matter, that
7 the tickets were bought at 9:41 on the evening of Sunday, March
8 24th, and that the two, the show was, I think it was Blade Two,
9 whatever, whatever Mr. Harding told you. And the theater also
10 provided some information on the run time.

11 Mr. Harding tells you, without elaboration, that a
12 woman by the name of Lakeisha McCoy, who Mr. Martin took to the
13 movie, was enlisted to provide a phony alibi. I'm not exactly
14 sure what's so suspect about a person taking a girlfriend to a
15 movie on a Sunday night. I'm particularly less sure why it
16 should be suspicious that he would take her there on Sunday,
17 March 24, when the girlfriend's birthday was March 24th.

18 As Mr. Harding indicated, I think, in an aside, this
19 wasn't a so-called perfect alibi because it would have been
20 possible to essentially leave the movie after it got out and get
21 to the murder scene.

22 But the truth of the matter is, and we believe you will
23 come to accept this, is that Mr. Martin wasn't setting up the
24 false alibi. Mr. Martin was going to a movie. And there's
25 nothing wrong about that.

1 The telephone traffic. On the evening of March 24,
2 there are some phone calls between one of the cells that Willie
3 Mitchell maintained in somebody else's name and Martin's cell
4 phone. There is no evidence that Mr. Martin answered any of the,
5 any of the calls to him. Although we haven't pinned this down
6 completely, we're basically 99% sure that when the records come
7 in, you will be convinced that they all rang over into voice mail
8 and were not answered.

9 It is absolutely clear that Mr. Martin never called Mr.
10 Mitchell that evening. Mr. Mitchell was calling him. Mr.
11 Martin, they were going into voice mail, and Mr. Martin didn't
12 call him.

13 Finally, let me tell you something else about Mr.
14 Martin's cell phone. We've heard that Mr. Mitchell had one phone
15 that was registered to a phony business. He used another phone
16 that was in his girlfriend's name. I'm pretty sure that was
17 Jaquette Smith. Mr. Martin was using a cell phone to which Mr.
18 Martin was a subscriber. It was not one that was used whenever
19 anything -- it was not one that was, that he was worried about
20 people knowing that he was getting calls or making calls. You
21 know, his use of that phone is absolutely, absolutely legitimate,
22 which may be, may be somewhat remarkable as some of this evidence
23 comes in in the case.

24 There was also just a brief mention that supposedly the
25 word "Wayne" appeared in the message that went into Irene

1 Magginson's thing. I'm not quite sure what it is, whether it was
2 Wayne or Dwayne or man or main, which is sometimes sort of a
3 dialect that goes from man. But whatever it is, from the tone of
4 the conversation, it isn't clear that whoever is speaking is
5 addressing anybody in the car or that anybody named Wayne or
6 Dwayne or anything else was there.

7 So the important thing that I want to emphasize is that
8 Mr. Martin is not charged with doing most of the serious stuff
9 that you're going to be hearing about and that he didn't have
10 anything to do with the Wyche brothers.

11 Let me just speak for a second, because Mr. Harding
12 yesterday indicated that Mr. Martin was somehow involved or had
13 had some conversations about a robbery of a man by the name of
14 Darius Spence, who's the husband of Tonya Jones-Spence, who was,
15 in fact, killed sometime in June.

16 Mr. Martin is out of the picture on April 17th.
17 Remember, that's the day that I told you that he was interviewed
18 by Detective Niedermeyer and he gave the statement. He's
19 basically in jail from that point forward.

20 The indictment that we have here is called a fourth
21 superseding indictment. What that means is that there were
22 original indictments and that there were four superseding
23 indictments. This is essentially the fifth time that the
24 government gets its, gets its act together and put these charges
25 together.

1 At no place in this indictment does it say that Mr.
2 Martin was involved with respect to anything for Darius Spence or
3 for Tonya Jones-Spence. There are passages in here that will
4 tell you that other people were involved in this conspiracy to
5 rob Darius Spence and possibly to kill him. Mr. Martin, on the
6 fifth try, is not said to have been involved in that at all.

7 Now, somebody, and apparently a fellow by the name of
8 William Montgomery, is going to say something different. This is
9 an individual that the prosecution likes to call a cooperator.
10 It's the type of person that Ms. Rhodes called a snitch. I will
11 tell you what William Montgomery is. William Montgomery is a
12 stone cold killer. He is a gun for hire. If you have somebody
13 that you don't like and would like to see out of the way and you
14 have \$5,000, William Montgomery is your man. Except now that he
15 is the prosecution's man.

16 I would hate to rely on anything that Mr. Montgomery
17 says. However, I will tell you that if he says that my client
18 was in any way involved in any discussions with respect to Darius
19 Spence or had anything to do with the Tonya Jones-Spence murder,
20 I'm going to spend a lot of time referring Mr. Montgomery to his
21 prior sworn statements given to law enforcement officers and his
22 testimony in the grand jury and his testimony in at least one
23 other proceeding. He never said that once before.

24 Now, I'm a lawyer and I've really gone through the most
25 important stuff, but it's sort of like I can't help myself. I've

1 got to talk about some of the technical stuff, also. So here it
2 is.

3 This fourth superseding indictment with 19 counts is,
4 as Judge Davis told you on Monday, extraordinarily complex. And
5 let me just summarize what I think are some of the high points.

6 The murder charges against Mr. Martin and, indeed,
7 against all of the defendants require the prosecution not just to
8 prove that there was a murder, indeed not even to prove that one
9 of the defendants was involved in the murder. They have to show
10 that those murders were part of this RICO enterprise, this 12
11 year continuing combination which is charged in the indictment.

12 Secondly, all of the firearms charges against Mr.
13 Martin require the government to prove either the RICO enterprise
14 and conspiracy or the very similar drug conspiracy. What they
15 have to show is that, beyond a reasonable doubt, that those
16 matters existed and that Mr. Martin was a member of them.

17 Now, I'm not going to discuss the law, maybe to a
18 degree because I don't really understand it. Judge Davis is
19 going to give you, at the end of this case, what are necessarily
20 very complex and detailed instructions. That will be weeks from
21 now. What I want to discuss is what the facts will show, and
22 more correctly maybe what they won't show.

23 The government, we submit, will not show that there was
24 some continuing, ongoing criminal enterprise which lasted between
25 1994 and April 16 of 2004. My notes from Monday indicate that

1 what Judge Davis said was that the indictment charged this was an
2 ongoing organization in a continuing unit. Whatever the evidence
3 does show, it's clearly not going to show that anything like this
4 existed for either the 12 year period or some period of time that
5 was reasonably related to that.

6 There essentially was no core. There wasn't something
7 that continued throughout, throughout.

8 Again, there's going to be some evidence of drug
9 dealing. Indeed, there's going to be some evidence of drug
10 dealing between my client and Mr. Gardner. But there won't be
11 any evidence that anything continued for that period of time.

12 Now, surely, during this case you're going to learn, as
13 Ms. Rhodes told you, that some of the defendants' paths crossed
14 at various times. And some of those times they crossed you may
15 be convinced they were doing things they really truly shouldn't
16 be doing. But if their paths would cross, they would then
17 diverge, and then people would come together, and then people
18 would break off, and people, and then different people might come
19 together.

20 What the prosecution has to show in this case is that
21 there was some continuing core, there was something which
22 subsisted throughout that. And that is not anything, that is not
23 anything that happened.

24 The evidence will show, as Ms. Rhodes explained, and
25 I'm not going into any detail, that there wasn't any structure.

1 There was no organization. There was no bank account. There was
2 no place where people kept their money. There was none of the
3 stuff that you would expect out of this major drug organization.
4 In particular, I think you will be struck, as this case goes on,
5 there was none of the bling, none of the evidence that this was
6 any sort of a profitable enterprise at the various times when it
7 might have existed.

8 We are also told that Shake Down Enterprises was a
9 primary sort of organizational element of this thing. Ms. Rhodes
10 is correct. If there's anything that's organized in this, it's
11 Shake Down Enterprises. You will not hear my client's name and,
12 in fact, you will not hear Mr. Gardner's name mentioned with
13 anything with respect to Shake Down Enterprises. To the extent
14 that this was an organizational sort of pivot for this supposed
15 thing, it simply was not one that my person, that my client was
16 involved in.

17 On the technical stuff, what we are telling you, the
18 instructions, listen to the evidence and say, is this something
19 that really goes on that I can follow this for months, you know,
20 from week to week or even month to month or even year to year?
21 There are whole periods of time when I don't know anything about
22 it. Is it really the core of these four people? How often do we
23 see them together? I would suggest to you that you don't often
24 see them together at all.

25 So again, the important thing is my client was not

1 involved in the murders of Darryl and Anthony Wyche. He didn't
2 do most of the other stuff that was involved. And on the
3 technical things, that this so-called enterprise that the
4 government has charged, and really, the way that this thing got
5 into federal court, just didn't exist. And that's something they
6 have to prove beyond a reasonable doubt.

7 When the case is over or at least when the evidence is
8 finished, I'll be up weeks from now talking to you again. At
9 that time I expect that I'm going to ask you to find Mr. Martin
10 not guilty of all the charges. No person, and certainly not Mr.
11 Martin, should be convicted of the crimes that are being charged
12 on the evidence that the prosecution's going to present here.

13 Thank you very much for your attention.

14 THE COURT: Thank you, Mr. Crowe. Mr. Coburn, whenever
15 you're ready.

16 MR. COBURN: Thank you so much, Your Honor. I think
17 I'm required to wire up with the device.

18 I'm required to wear this thing, ladies and gentlemen,
19 because it's such a big courtroom and the court reporter is
20 sitting back there about a quarter of a mile away. But I
21 guarantee you're not going to have any difficulty hearing me.

22 First, may it please the Court, counsel, good morning.
23 Ladies and gentlemen of the jury, good morning. My name is Barry
24 Coburn, and together with that gentleman all the way on the
25 left-hand side over there, that's Adam Kurland, we have the

1 privilege and the honor of representing our clients, the
2 gentleman sitting immediately to his left, Shawn Gardner.

3 Now, ladies and gentlemen, we appreciate very much what
4 Judge Davis said during the course of jury selection in this case
5 about the critical role that defense lawyers play in the
6 adjudication of justice in the federal, and in fact, every
7 criminal justice system in the United States. And of course we
8 agree.

9 The fact of the matter is that defense lawyers, as well
10 as prosecutors, play a critical role in doing what the system is
11 all about. And that is, what this system is designed to do is to
12 find the truth. The truth often times can be a very illusive
13 concept, ladies and gentlemen. And that's the reason why this
14 system that we use, which you now are a critical and even more
15 critical, frankly, part of, is so ingenious. Because what it's
16 designed to do is to create a clash. It's designed to create
17 sort of an argument that occurs before you in which the
18 prosecutor advocates for one position, the defense lawyers
19 advocate for another position. They do it aggressively and
20 zealously and with determination. And through that process,
21 through that interaction, that clash, the truth is, it is hoped,
22 it is designed that the truth will emerge before you.

23 Now, you, ladies and gentlemen, actually have what is
24 typically, and I'm sure will be in this case, the hardest job in
25 this courtroom, because unlike virtually anybody else, any of the

1 other principal participants in this process, you are not allowed
2 to talk during the entire process until the very end when you
3 deliver your verdict, which, actually, the word "verdict" means
4 to speak. It's a Latin term meaning to speak the truth. That's
5 what you'll be doing at the end of this process when you return
6 your verdict.

7 And so what you ladies and gentlemen are going to be
8 doing is relying upon your eyes and, most importantly, your ears.
9 And that's what you have principally to work with during the
10 course of this case. And that's what we're relying on.

11 You, ladies and gentlemen, will see how this process
12 will emerge over the course of time. We're all going to get to
13 know each other very well.

14 We are particularly pleased and honored to appear
15 before you in this case because this case is one in which the
16 allegations and the underlying facts are going to be extremely
17 inflammatory. They're going to be hard to take. By their very
18 nature, they're going to be upsetting because what we're here to
19 talk about, aside from drug dealing and various other sorts of
20 things which you've heard a legal bit of a sketch about so far,
21 is murder.

22 Now, murder is something which most people have a lot
23 of difficulty even getting their minds around. I mean, just the
24 idea of intentionally taking the life of another human being.

25 And I submit to you, ladies and gentlemen, and I mean

1 nothing personal about this because we have extremely wonderful
2 people prosecuting this case, very competent lawyers, I submit to
3 you, and we'll go into this in a little bit more detail a little
4 later, that part of what the United States, part of what the
5 government, the Department of Justice, relies upon when they
6 prosecute these kinds of cases in the way this case is being
7 prosecuted is the very inflammatory, and by its very nature, very
8 upsetting core, the very nature of the allegations in this case,
9 is just something which any normal human being would feel
10 inflamed and upset by. And that's true with respect to each of
11 the five homicides of the five inherently valuable people whose
12 lives were snuffed out in this case.

13 Excuse me for one second.

14 There is sometimes, ladies and gentlemen, a perception.
15 And part of the reason perhaps, I'm speculating, that Judge Davis
16 thought it was important to make the point that he made about
17 defense lawyers in this case, there is sometimes a perception
18 that defense lawyers perceive it to be their job when they are
19 honored to stand before a jury just like you ladies and
20 gentlemen, to essentially try to confuse the facts, to throw up a
21 lot of smoke. And I'm not suggesting that any of the other
22 lawyers in this case did that or that they intend to do it.

23 But there is this kind of perception that defense
24 lawyers, when they try a case, I'm not saying that even if a
25 lawyer were to do this it would be necessarily, you know, a bad

1 thing or an unethical thing because it's part of the process of
2 sort of testing the prosecution's allegations in the case,
3 testing the strength of them and their believability. But there
4 is this perception that sometimes a defense lawyer would stand
5 before a jury and do that to try and confuse, to try to divert
6 and deflect, as opposed to trying to clarify the facts.

7 Ladies and gentlemen, I am here to tell you that Mr.
8 Kurland and I are not about that in this case. What we are here
9 to do is to ask you ladies and gentlemen to focus like a laser
10 beam, focus like a laser on just a couple of key issues in this
11 case. Because from our point of view, the harder your focus, the
12 better you listen. The more tuned in you are to the detail, just
13 the wealth of detail that will be emerging before you in this
14 case, the more likely it is that you, ladies and gentlemen, are
15 going to come to the just and appropriate verdict in this case,
16 which we submit is going to be a verdict of not guilty with
17 respect to our client.

18 Now, what am I talking about? Why do I say this?
19 There are just a couple of key issues, a couple of key things in
20 this case that we're going to ask you ladies and gentlemen to
21 think hard about. And one of them, some of them have already
22 been alluded to a little bit during the course of what you heard
23 yesterday and today. But one of them, I submit to you, ladies
24 and gentlemen, is best illustrated, it is just such a wonderful,
25 clear, elegant idea, that it is best illustrated with a

1 children's toy. And I'm going to show it to you right now.

2 What's this? This is a square peg. What's that? That
3 is a round hole. That's what the government is trying to do in
4 this case. They are trying to put a square peg -- you've heard
5 this expression before, square peg in a round hole? They're
6 trying to put a square peg into a round hole. It won't go.

7 You've heard a number of different concepts which
8 lawyers, I mean, these are words that lawyers use and they're
9 words that you, ladies and gentlemen, are going to become
10 intimately familiar with, just because you're going to understand
11 them at least as well as we do.

12 And I'm not going to actually presume to explain them,
13 you know, in any sort of conclusive way because that is Judge
14 Davis's role in this case. At the end of this case, Judge Davis
15 is going to give you a set of instructions and those instructions
16 are going to tell you to faretheewell. Those are the ones that
17 are going to be the bottom line in terms of how these various
18 concepts and ideas that you've heard the various lawyers in this
19 case talk about, how they are to be used, how they are to be
20 deployed in this case.

21 Now, you ladies and gentlemen have heard the
22 expression, Don't make a federal case out of it?" Now, when I
23 say that, "Don't make a federal case out of it", I'm not for a
24 minute, not for one minute belittling the importance of what
25 happened out there in terms of the facts that are going to be

1 discussed during the course this trial because it's nothing that
2 could be more important or more egregious, more horrible, really,
3 than murder. Nothing.

4 I'm not saying anything to the contrary about that.
5 But this is a special kind of a case. Judge Davis alluded to it.
6 A number of the other lawyers have talked about it. This is a
7 federal case. This beautiful, enormous courtroom we sit in.
8 This trial is presided over by a judge who is appointed by the
9 President of the United States, confirmed by the United States
10 Senate. This is a federal case.

11 And what that means is that the case is based on United
12 States law, law of the country as opposed to the law of the State
13 of Maryland. You know, a lot of people don't really think that
14 much about this but everywhere in the United States, at least in
15 the 50 states, we're all subject to two separate sovereigns, two
16 separate bodies of law. There are state laws and there are
17 federal laws. This case is based on federal law.

18 And so when we talk about murder, murder is, as I think
19 one of the other lawyers already indicated, is typically
20 prosecuted under state law. That's not to say it can't be
21 prosecuted federally. Obviously, it can. But when it is, when
22 it is prosecuted federally, as the prosecutors have decided to do
23 in this case, it is subject to certain very special requirements.

24 And these requirements are reflected in the indictment
25 in this case because what's indicted, what's charged against

1 these individuals, specifically against our client, Mr. Gardner,
2 is based on these federal laws. And in order for the government
3 to succeed in carrying its burden to prove Mr. Gardner guilty
4 beyond a reasonable doubt of any of these offenses, as I expect
5 the judge will instruct you at the end of the case, the
6 government's got to prove beyond a reasonable doubt each of the
7 series of what are called elements or parts of each of these
8 offenses. Okay?

9 And the one particular kind of offense that I'd like to
10 focus you on right now, and this is what I'm talking about when I
11 say focus like a laser beam, is this idea of a RICO conspiracy.
12 Now, the word "RICO" kind of has a little bit of a humorous
13 connotation because it's got this sort of, you know, the way it's
14 abbreviated, R-I-C-O. But it's not humorous at all. It's a very
15 serious and important federal law. It stands for Racketeer
16 Influenced and Corrupt Organizations Act. The law's been in
17 existence for decades. There are, you know, it's been
18 interpreted in many, many cases and so on.

19 Some of what's been discussed before you today and even
20 yesterday kind of confuses a couple of different critical ideas.
21 And you, ladies and gentlemen, given the importance of the task
22 that you have in this case, you cannot afford to be confused.

23 Now, when we talk about a conspiracy, that's one thing.
24 And the government talks about, you know, conspiracies, you may
25 recall Mr. Harding say yesterday the conspiracy doesn't have to

1 be part of a written agreement, it doesn't even have to be an
2 oral agreement. I think I'm virtually quoting him. It can be
3 tacit. Remember, he used that word? Just kind of a bunch of
4 people doing things together, so on, so forth. Suggesting that
5 that's all you need. If you find that, you know, the people
6 involved were kind of doing some things together, that's enough,
7 the government suggests to you; then they've proven what they
8 need to prove.

9 I respectfully but emphatically agree. And obviously
10 it will be the Judge's instructions that are going to ultimately
11 be the bottom line on this.

12 But I suggest to you that what the government has to
13 prove with respect to, certainly, the key allegations in this
14 case are what are called, what is called the existence of a RICO
15 enterprise. Remember that term if you will. RICO enterprise.

16 A RICO enterprise is not just a conspiracy. It is not
17 just a conspiracy. And this idea that it can be just a tacit
18 agreement of a bunch of people who do a few things together, I
19 respectfully suggest to you that's dead wrong. A RICO, you can
20 see, actually, what's required by the language that is utilized
21 in the indictment, which you ladies and gentlemen will be able to
22 take back with you to the jury room.

23 Here's what's charged in the indictment with respect to
24 the RICO enterprise. The four defendants, along with others
25 known and unknown to the grand jury, were members of a group

1 referred to herein as the Randallstown/Park Heights organization,
2 a criminal organization.

3 The Randallstown/Park Heights organization, including
4 its leadership members and associates, constituted -- and this is
5 in the indictment -- constituted a, quote-unquote, "enterprise as
6 defined by these sections: 1961, 1959. That's RICO. Okay? Of
7 the U.S. code.

8 And this is the key language. That is, a group of
9 individuals and an entity associated in fact which engaged in and
10 the activities of which affected interstate and foreign commerce;
11 the enterprise constituted an ongoing organization whose members
12 functioned as a continuing unit for a common purpose of achieving
13 the objectives of the enterprise. And then it lists them.
14 Enriching the members. Preserving and protecting the power,
15 territory, and profits of the enterprise. Promoting and
16 enhancing the enterprise. Maintaining and promoting the rap
17 music business in which the members were involved, including
18 Shake Down Entertainment Limited. Preventing and obstructing the
19 arrest and prosecution of members through disruption of court
20 proceedings.

21 Says members of the enterprise -- and you may recall
22 the judge using this language -- made decisions, both by mutual
23 consent and by directions from its leaders.

24 So that, that is what has to be proven beyond a
25 reasonable doubt in this case. And you're going to be hearing

1 lots more detail about just what constitutes a RICO enterprise
2 for purposes of this case.

3 And that, ladies and gentlemen, is something that the
4 government cannot prove. They cannot prove it in this case.
5 That is putting a square peg in a round hole.

6 Ask yourselves, as the evidence comes in in the case,
7 where is the evidence of that RICO enterprise? Where is their
8 infrastructure? Is there, you know, I mean, you obviously don't
9 necessarily need to have a building or a headquarters, but is
10 there anything like that? Is there a place where people go to
11 work every day? Are there initiation procedures like, remember
12 in the Mafia, you know, the blood oath and that kind of thing?
13 Is there any kind of penalty for anybody who wants to pull out?
14 Are they engaged in other activities with other people, as
15 opposed to just the people that are alleged to be part of this
16 RICO enterprise?

17 Ask yourselves all of these questions as the evidence
18 comes in in this case. And I submit to you, ladies and
19 gentlemen, that you'll find that there's no way the government
20 can prove the existence of this entity beyond a reasonable doubt.

21 And with respect to Mr. Gardner's alleged participation
22 in what they seek to define as a RICO enterprise in this case,
23 ask yourselves, where's the evidence of it? Is Mr. Gardner a
24 rapper? Does his voice appear on any rap song that you ladies
25 and gentlemen hear? Is his name on any piece of paper associated

1 in any way with Shake Down Entertainment Limited?

2 Did he have anything to do with the Stop Snitching or
3 Stop Snitching Two video, according to the government's evidence
4 in this case? Anything?

5 Excuse me for just one second, ladies and gentlemen.

6 Now, the government, ladies and gentlemen, is so
7 anxious to prove the existence of this coherent, coordinated,
8 established entity in this case, and to prove that each of the
9 homicides that's at issue was committed, and this is another key
10 term that I'll ask you ladies and gentlemen to focus on, again,
11 like a laser beam, in furtherance, in furtherance, in other
12 words, that the reason why, the government's position is that the
13 reason why the people who were horribly murdered in this case
14 were murdered was in order to promote this enterprise.

15 They are so anxious to prove that that they go so far
16 as to invoke, to try to prove to you that the tactics, the sort
17 of desperate things that these individuals did, after they were
18 made a part of this case and after they were incarcerated, these
19 tactics that were referred to and that Ms. Rhodes referred to and
20 some of the other lawyers, their position is that that is proof
21 of a RICO conspiracy in this case.

22 You, ladies and gentlemen, are going to be hearing a
23 lot of evidence about how, you know, these kinds of strange
24 tactics that, you know, people in their desperation use in these
25 kinds of cases are by no means restricted even to this case, that

1 there are lots of other cases in which the exact same tactics are
2 used. So ask yourselves whether that is proof of some kind of an
3 integrated RICO conspiracy in this case.

4 Now, you are going to be hearing evidence, as has
5 already been stated, that Mr. Gardner was engaged in some
6 criminal conduct earlier on and that that conduct was addressed
7 in some cases by, you know, state law enforcement authorities.
8 And the question really is not whether, is not going to be
9 whether or not those things happened because the evidence is
10 going to show, in all likelihood, that they did. The question is
11 going to be whether that is proof in any way, shape or form of
12 the existence of the RICO conspiracy that's charged in this case.
13 And it's not.

14 Now, there's one particular thing, one particular key
15 thing with respect to this question of a RICO enterprise that I'm
16 going to ask you ladies and gentlemen again to pay particular, if
17 you will, to pay particularly close attention to. And that
18 relates in our case, with respect to our client, Mr. Gardner, to
19 the murder of Tonya Jones-Spence. That's a name you've heard a
20 number of times.

21 Now, ladies and gentlemen, this was a horrible murder
22 and there is no excuse for it. This was the murder that you've
23 already heard Mr. Harding talk about in which a young woman was,
24 they attempted to sort of bind and gag her in her apartment. She
25 goes over a ledge. She crawls under an overhang, and she's shot

1 by two individuals.

2 Now, there's going to be a lot of confusion in the
3 testimony in terms of identifications and physical descriptions
4 and that sort of thing, and who was wearing what color hat and
5 who did what and who was carrying which gun and all that sort of
6 thing. I submit to you a lot of that is going to be grossly
7 unclear, as this trial develops.

8 One thing, I submit, that will be crystal clear, that
9 is going to be crystal clear, is that there is no way, there is
10 no way that this homicide could possibly have been in furtherance
11 of the hypothetical RICO conspiracy that the government alleges
12 existed in this case. There are going to be just a host of
13 reasons as to why that cannot be.

14 Ask yourselves, ask yourselves, when all the evidence
15 is in in this case, what do you think, what do you believe were
16 the reasons why this homicide was committed? Was it in pursuit
17 of some kind of a complex RICO enterprise as defined by the
18 government? Or was it done for the pettiest of reasons? The
19 pettiest and most common of reasons in terms of just seeking to
20 enrich, seeking to make some money, and having nothing whatsoever
21 to do with the kind of enterprise that's been alleged by the
22 government in this case?

23 And when you make this determination, think in
24 particular about the testimony. And I know there have been a lot
25 of names, ladies and gentlemen, that have been thrown around

1 already and it's probably very hard to kind of track them all
2 since you haven't been living with them for months and years like
3 we have. But one name in particular I'm just going to ask you,
4 ladies and gentlemen, to please focus hard on, and that name is,
5 I think he was referred to as Will, full name is William
6 Montgomery. William Montgomery.

7 William Montgomery will be a critical or the critical
8 witness that the government is going to rely upon with respect to
9 the murder of Tonya Jones-Spence. And that's the murder that Mr.
10 Gardner is alleged to be a direct and critical participant in.

11 Now, there's already been some language used. The word
12 "snitch" was used during the course of this proceeding. And, you
13 know, other people refer to these witnesses as cooperating
14 witnesses.

15 I know that you've been talked at for a while here, but
16 please just give me five or ten minutes more to talk about this
17 one critical thing.

18 A cooperating witness is probably in these kinds of
19 cases the thing that sort of occupies the most time and the most
20 energy on the part of all the lawyers who are involved in
21 prosecuting and defending these cases. The government, as you
22 have already heard Mr. Harding tell you, the government takes the
23 position that cooperating witnesses, and I expect, by the way,
24 that you're ultimately going to be instructed to use this
25 testimony, kind of testimony with care because of its very

1 nature. But cooperating witnesses, the government take the
2 position that they negotiate a deal. You know, it's a plea
3 bargain. You're going to be seeing the actual contracts that
4 exist between these witnesses and the government. And you're
5 going to see that the contract, these letters of, you know, plea
6 letters or plea agreement letters, contain explicit language in
7 them to the effect that if you're not truthful, it says to the
8 defendant, if you're not truthful then the deal's off and you can
9 be prosecuted and lots of bad things are going to happen to you.

10 But it's going to be necessary, I submit to you, ladies
11 and gentlemen, to just dive a little deeper into the way the
12 system works in order to truly, to truly, to find the truth, to
13 appraise the testimony of these witnesses accurately. Because
14 the truth, and the reason why we have this whole system with all
15 its complexity and the clash between the two sides and so on, is
16 because the truth often times is a very elusive concept and it
17 can be in the eye of the beholder.

18 You ladies and gentlemen are going to be finding out
19 how the system works. And you're going to see that ultimately
20 the final arbiter with respect to who's telling the truth with
21 respect to these cooperation agreements is the government. Only
22 the government is allowed to make the motion under what's called
23 the Federal Sentencing Guidelines to reduce the sentence that a
24 cooperating witness is facing based on their cooperation. Only
25 the government. It only counts what they think is the truth.

1 Sometimes even the government may not know precisely what the
2 truth is.

3 Basically, the way the system is designed is the
4 witness has an almost irresistible incentive to please the
5 government. You may hear that these witnesses are referred to by
6 law enforcement, once they turn, as what's called playing on Team
7 USA. They have to, they have to testify. They have to present
8 their testimony in a way that the government deems truthful in
9 order to receive the kind of credit with respect to their
10 sentence that they are so desperately seeking.

11 Now, with respect to Mr. Montgomery, and this is where
12 this becomes just so extraordinarily important, particularly from
13 our point of view. We are not, some defense lawyers spend a lot
14 of time on kind of picayune little details during the course of
15 trials. You know, little teeny inconsistencies between a
16 witness' testimony at trial and what the witnesses said
17 beforehand, let's say, in the grand jury or to a police officer,
18 or so on. Mr. Kurland and I, we're not going to do that. We
19 know your time is valuable. We don't think it's effective or
20 appropriate, anyway. So when we focus on something like that, we
21 submit to you it's going to be significant.

22 With respect to Mr. Montgomery. And this is where all
23 these things that we've just been talking about sort of come
24 together, ladies and gentlemen. Remember, the government needs
25 to prove, the government needs to prove with respect to the Tonya

1 Jones homicide that that homicide was in furtherance, in
2 furtherance of the RICO enterprise, the RICO enterprise that they
3 allege existed in this case.

4 Listen carefully to what Mr. Montgomery, during the
5 course of his trial testimony, listen carefully to what he tries
6 to give them in that regard. In other words, listen carefully to
7 the extent to which his testimony supports the idea that the
8 government is pushing in this case, that that homicide was in
9 furtherance of this RICO, this alleged RICO conspiracy.

10 Listen carefully, for example, to whether Mr.
11 Montgomery tells you that his understanding was that, you know,
12 money was needed in order to pay for Mr. Martin's lawyer so that,
13 you know, the enterprise, the RICO enterprise could continue.

14 And then, when the time comes for his cross
15 examination, listen carefully to the prior statements that he
16 made on this subject, on the reasons, what he says are the
17 reasons for the Tonya Jones-Spence homicide before he had an
18 incentive to provide that evidence, that in-furtherance evidence
19 to the United States government. That, from our point of view,
20 is probably going to be the most critical issue in this case.
21 And so I am very grateful to have had the opportunity to give you
22 ladies and gentlemen a little preview of it and to ask you to
23 focus hard on it.

24 And with that, I think I've taken up enough of your
25 time. I thank you very much. When all is said and done and this

1 trial is completed, Mr. Kurland and I will have another
2 opportunity to talk to you. We look forward to that very much.
3 Thank you again.

4 (Conclusion of Excerpt.)

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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on September 17, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my
signature this _____ day of _____, 2008.

Mary M. Zajac,
Official Court Reporter

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